Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	**GN Docket No. 93-252**
	)	
	)	
Regulatory Treatment of Mobile Services	)	
	)	

To: The Commission

REPLY COMMENTS OF E.F. JOHNSON COMPANY

E.F. JOHNSON COMPANY

Russell H. Fox
Gardner, Carton & Douglas
1301 K. Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
202-408-7100

Its Attorneys

July 11, 1994

TABLE OF CONTENTS

SUMMARY

In these Reply Comments, E.F. Johnson Company addresses five issues. First, the Company discusses the plan, proposed by Nextel to "repack" the 800 MHz band to create an exclusive wide area SMR block. In responding to Nextel's proposal, the Commission must ensure that there remains sufficient spectrum to satisfy the demonstrated demands of local SMR providers and other entities traditionally licensed to employ the 800 MHz spectrum. The FCC must minimize any disruption to existing users of the spectrum that is the target for the exclusive wide area SMR block.

The Company also reiterates its position that the Commission should take measures to allow interoperability between subscriber units and infrastructure, in those services, like cellular and wide area SMR, where mobile telephone like services are provided to consumers. The Reply Comments argue against those entities who state that all CMRS providers should be regulated in the same fashion and against those entities who state that all CMRS providers should be permitted to offer dispatch services. Finally, the Company states that the Commission should further examine the regional licensing of 220 MHz systems.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	**GN Docket No. 93-252**
	)	
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

REPLY COMMENTS OF E.F. JOHNSON COMPANY

E.F. Johnson Company ("E.F. Johnson" or the "Company"), by its attorneys, pursuant to the provisions of Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its Reply Comments responsive to comments filed by other parties to the Further Notice of Proposed Rule Making ("Further Notice") adopted in the above referenced proceeding[1] which is intended to provide a transition to a new regulatory scheme for mobile communications services.

I. INTRODUCTION

E.F. Johnson is a leading designer and manufacturer of radio communications and specialty communications products for commercial and public safety use. Among other frequency bands for which the Company manufactures products are the 800 MHz, 900 MHz and 220 MHz bands.[2] The Further Notice discussed a variety of regulatory schemes that, if adopted, would have a dramatic affect on the Company's ability to manufacture

---

[1]Further Notice of Proposed Rule Making, GN Docket No. 93-252, FCC 94-100 (Released May 20, 1994).

[2]The Company recently announced plans to manufacture narrowband equipment for the 220 MHz band using Linear Modulation Technology ("LMT"). It expects to begin to manufacture and distribute 220 MHz products shortly.

and market its products. Moreover, the Company supports a network of over 600 dealers, most of whom hold licenses in either the 800 MHz, 900 MHz or 220 MHz band. The Further Notice envisions modifications to the regulations that would change the way that these entities do business. Accordingly, E.F. Johnson submitted initial comments in this proceeding.

Among other arguments, the Company's comments pointed out the difficulty in imposing a wide area multi-channel specialized mobile radio ("SMR") licensing scheme on an already crowded spectrum landscape, in order to create parity between cellular providers and wide area SMR licensees. Nevertheless, even in their present form, the Company demonstrated that these wide area SMR providers are "functionally equivalent" to cellular licensees and should be subject to the same regulatory treatment. The Company also established that, because wide area SMR licensees would provide a service similar to cellular operators, they should be subject to the same interoperablitity standards as cellular operators. Other SMR providers, offering "local" service, should not be regulated in a manner similar to cellular licensees.

While many commenting parties expressed positions similar to those stated by the Company, others attempted to convince the Commission that all SMR licensees are functionally similar to cellular providers. As demonstrated below, there is no reasonable basis for this assertion. Some entities argued that in order to achieve regulatory symmetry, the Commission should allow cellular licensees to offer dispatch service. In addition to requesting this ability prematurely, these parties failed to acknowledge the substantial market disparities between cellular licensees and local SMR operators. Several parties questioned the need for equipment interoperability. As demonstrated below, because of market conditions at 800 MHz, such interoperability is necessary in order to protect consumers. Finally, Nextel, Inc. ("Nextel") proposed an 800 MHz band "repacking" plan to foster wide area SMR operations. While the Company recognizes that certain aspects of Nextel's plan may have merit, the Commission must take measures to

safeguard local SMR operators and other existing and potential users of the 800 MHz band. In order to more fully develop the public record in response to the comments of other parties, therefore, E.F. Johnson is pleased to have this opportunity to submit the following Reply Comments.

I. REPLY COMMENTS

A. Nextel's 800 MHz Band Repacking Proposal

1. General

Nextel states that, in order to achieve regulatory parity, the Commission "must" establish a 10 MHz block of 200 contiguous 800 MHz frequencies exclusively for wide area SMR licensing[3], defined on a Major Trading Area ("MTA") basis. Nextel argues that the creation of this block is "essential" to "redress" the disparities between the licensing of wide area SMR systems and cellular systems. In order to create this wide area SMR block, Nextel would mandate the relocation of current licensees on channels 401-600 of the 800 MHz band.[4] Nextel asserts that entities now licensed on those channels would not be harmed by such relocation because wide area SMR licensees would pay the cost of retuning all base station and customer equipment to frequencies below channel 401. In this fashion, the channels 401-600 would become a wide area SMR band, while the channels below 401 would support local SMR systems and other traditional PMRS operations.

E.F. Johnson acknowledges that adoption of Nextel's plan will assist Nextel in its wide area SMR implementation. The Company, however, is concerned about the impact of such a plan on existing and potential local SMR licensees and PMRS operators. Such a plan is acceptable only if it can be implemented with adequate safeguards for non-wide

---

[3]The Company hereinafter refers to this 10 MHz block as the "exclusive wide area SMR block".
[4]There are 600 channels in the 800 MHz band designated for private land mobile use. Some will continue to be employed for Private Mobile Radio Service ("PMRS") systems, while others will be used for CMRS applications. For ease of discussion, the channels are referenced herein by the numbers assigned to them in the Commission's rules.

area SMR services, specifically: 1) sufficient spectrum must be available for local SMR and PMRS operators in the 800 MHz band; and 2) any retuning must be accomplished without any cost and with minimal disruption to existing licensees. E.F. Johnson strenuously rejects, however, Nextel's premise that such an action is necessary to achieve regulatory parity. The Company recommends that the Commission initiate a further phase of this proceeding to determine the most effective way to create a wide area SMR licensing band, while attaining the two goals highlighted by the Company.

Nextel asks that the FCC establish an exclusive wide area SMR block, but does not wish to be constrained to the use of the 200 channels in the block. It asserts that greater than 200 channels may be necessary to implement wide area SMR systems. In evaluating any band repacking proposal, the Commission must ensure that there remains sufficient spectrum non-SMR service in the 800 MHz band. Under Nextel's proposal, all spectrum (except that designated for public safety use) could ultimately be designated for wide area SMR use. Such a result would be contrary to the public interest.[5]

The 800 MHz band was initially allocated to the private radio services to accommodate the growth of a variety of mobile communications requirements. The 800 MHz allocation allowed some companies to satisfy their communications requirements by operating their own systems, while many small and medium sized businesses found it efficient to use the services of local SMR operators to meet those needs. The demand for spectrum to satisfy these types of communications requirements (either internal systems or low cost local SMR service) still exists and continues to grow. Accordingly, the Commission would ill serve the public interest if it did not ensure that there remained sufficient spectrum outside the exclusive wide area SMR block to meet the needs of companies operating their own communications systems and of local SMR providers, the traditional users of the 800 MHz band.

---

[5]Accordingly, in a further phase of this proceeding, the Commission should determine an appropriate limit on the number of channels that would be set aside for the exclusive wide area SMR block.

Moreover, failure to preserve sufficient spectrum outside the exclusive wide area SMR block is contrary to the public interest because it will cause significant economic harm to E.F. Johnson and other manufacturers. E.F. Johnson secures a significant portion of its income from sales to local 800 MHz SMR providers and companies with their own 800 MHz communications systems. However, Nextel and other wide area SMR providers, through their economic and technological partnerships with Motorola, have prevented E.F. Johnson and others from serving the wide area SMR market. If the Commission does not prevent the entire 800 MHz band from being cannibalized for wide area SMR service, E.F. Johnson's economic viability and the viability of other manufacturers will be threatened, reducing choices for consumers not only in the 800 MHz band, but in other portions of the spectrum as well. This reduction in consumer choice is certainly not in the public interest.

E. F. Johnson's other major concern with Nextel's plan is the difficulty of successfully relocating entities now licensed on channels within the proposed exclusive wide area SMR block. First, the Commission must ensure that these licensees ultimately receive authorizations for systems with the same technical characteristics as the systems they would be required to abandon. If a licensee is authorized to employ 10 channels in the 401-600 channel block in Manhattan on the Empire State Building, with 1000 watt effective radiated power ("ERP"), and no co-channel users for 70 miles, the FCC must be able to ensure that it can relicense, pursuant to Nextel's retuning plan, that system with the same operating parameters (using equipment of their choosing, not Nextel's) on 10 other channels in the 800 MHz band.

In addition, the Commission must require that all costs associated with relocation are fully borne by the wide area SMR licensee. This procedure will require reprogramming, or in some cases, replacement, of each customer unit and base station transmitter. Such an intensive effort will be time consuming and costly and sufficient time must be permitted to accomplish the necessary changes. Further, all direct and indirect

costs for such customer unit replacement (including, but not limited to, customer solicitation efforts and the time and expenses of maintenance personnel) must be paid for or reimbursed by the wide area SMR licensee[6].

The Company's support of any efforts to repack the 800 MHz band is strongly tempered by Nextel's attempt to convince the Commission that such a plan is necessary to "redress" the disparities between cellular and wide area SMR licensees. Nextel perverts the true purpose of this proceeding and the underlying Congressional directive, which is to ensure that wide area SMR operators are subject to the same consumer protection requirements as are cellular operators and other common carriers. In the Second Report and Order in this proceeding, the Commission noted with approval the concern expressed by the House of Representatives that "[u]nder current law private carriers are permitted to offer what are essentially common carrier services, interconnected with the public switched telephone network, while retaining private carrier status."[7]

E.F. Johnson acknowledges that Nextel has amassed sufficient spectrum to compete with cellular operators. While the rules governing the private radio services never contemplated the creation of wide area SMR systems competitive with those of cellular operators, Nextel was able to secure enough channels to provide such a service. Its success is evidenced by the Congressional action requiring that Nextel's service be regulated as common carriage. Now, however, having achieved sufficient market power to merit common carrier regulation, Nextel asks that the Commission provide it with further competitive advantage by repacking the 800 MHz band. Nextel certainly knew of the crowded 800 MHz landscape when it embarked on its now successful effort to

---

[6]Under no circumstances should providing customers with new units be an opportunity for Nextel to solicit these entities. Wide area SMR licensees should be required to agree not to solicit customers of local
SMR licensees in the 401-600 channels for a reasonable period after retuning occurs.

[7]Second Report and Order, Implementation of Sections 3 (n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994), erratum, Mimeo No. 92486 (Released March 30, 1994) ("Second Report and Order") at paragraph 78.

compete with cellular operators. Nextel's request is therefore, not unlike the homeowner who purchases property at the end of an airport runway and then complains to the city council about the noise.

The purpose of this proceeding is not to assist Nextel in its ability to compete successfully with cellular carriers. Congress and the FCC have already found that its service should be considered competitive. The purpose of this proceeding is to ensure that the rules governing Nextel's provision of service are sufficiently similar to those of cellular operators to ensure adequate levels of consumer protection. Accordingly, while E.F. Johnson does not object to certain elements of Nextel's plan, the Commission must ensure that any adoption of a band repacking scheme is based upon sound engineering and spectrum allocation principles and not any imagined need to "redress" supposed imbalances in Nextel's competitive condition.

2. Comments on Specific Elements of Nextel's Proposal

Under Nextel's plan each wide area SMR licensee would be entitled to be licensed for all 200 channels in the proposed wide area SMR block even if it were currently authorized for fewer than 200 channels in an MTA. The Company does not agree that wide area SMR licensees should be permitted the windfall of having automatic access to all of these 200 channels. E.F. Johnson proposes that the relevant wide area SMR licensee should only be permitted access to that number of channels in the exclusive wide area SMR block for which it is the licensee already or for which it is able to swap with channels outside the block. A wide area SMR licensee should not, at the end of the swap procedure, hold licenses for more channels than when it started. A repacking plan should only permit repacking. It should not be a mechanism for wide area SMR licensees to secure more spectrum than they already have.

Further, wide area SMR licensees who currently hold more than 200 channels should be foreclosed from using channels outside the exclusive wide area SMR block for wide area SMR service. Without such a safeguard, the Commission will be unable to

ensure that there will remain sufficient 800 MHz spectrum for non-wide area SMR service.[8] As Nextel argues, wide area SMR licensees will receive a significant benefit from access to an exclusive wide area SMR block. In exchange for that significant benefit, they should be foreclosed from employing additional spectrum for wide area SMR use outside the exclusive SMR block. Nextel also recommends a procedure for resolution of disputes between wide area SMR systems in the same geographic area. E.F. Johnson does not object to the suggested dispute resolution measure, so long as no additional spectrum is dedicated for use by wide area SMR systems.

Finally, Nextel demands that the Commission provide it with control channels for wide area SMR operations. Nextel points out that an advantage to its repacking proposal would be a wide area SMR licensee's ability to designate control channels from the group of contiguous channels. Nevertheless, Nextel suggests that in the alternative, the FCC set aside frequencies for control channels for wide area SMR systems. E.F. Johnson strongly opposes this alternative suggestion. If a wide area SMR licensee requires control channels, it should be the licensee's responsibility to obtain those channels. Without displacing yet more existing 800 MHz licensees it would be impossible for the Commission to now designate channels for wide area SMR control channels. Wide area SMR licensees should provide for whatever control channels they require.

E.F. Johnson acknowledges that many of the problems highlighted in its initial Comments concerning the implementation of wide area 800 MHz SMR systems would no longer be relevant if the FCC grants wide area SMR block authorizations. For example, station identification requirements on wide area SMR channels would be less important if all channels in the block were licensed to a single entity. Similarly, emission mask

---

[8]Nextel asserts that greater than 200 channels may be necessary for the implementation of wide area SMR systems. However, without a limit on the number of channels that wide area systems may employ, spectrum will be unavailable for use by other traditional 800 MHz uses. The Commission should, in another phase of this proceeding, establish the channel requirements of each service, so that wide area systems do not foreclose other entities' demonstrated requirements for spectrum at 800 MHz.

requirements could be relaxed for wide area SMR licensee, if they are licensed for all channels in their geographic area.[9] However, the resolution of these problems should not take precedence over the more significant problems, raised above, that are created by Nextel's proposal..

B. Interoperability Should be Imposed on Wide Area SMR Providers

In its initial comments, the Company urged that the Commission impose interoperability standards for wide area SMR systems. The Company pointed out that because wide area SMR systems were substantially similar to cellular systems, upon which the Commission wisely imposed an interoperability standard, a similar requirement should be imposed on wide area SMR systems. Several parties disagreed with the Company. Those entities fail to appreciate the market conditions that compel the Company's conclusions.

For example, New Par states that " no new interoperability standards should be adopted within PCS, SMR or other substantially similar services. These emerging new technologies will likely support niche markets and may provide highly specialized services. To require interoperability among these various service providers would likely detract from an operator's ability to design it offerings to meet specific needs." New Par misses the point.[10] First, E.F. Johnson does not urge that the Commission mandate interoperability between the mobile units and infrastructure equipment used in different services. Nor does it suggest that there be interoperability standards for equipment in the same service, in instances where, as is the case with local SMR service, the service is not substantially similar to the consumer oriented mobile telephone like service offered by

---

[9]The Company nevertheless recommends that there be a guardband, to protect PMRS and other entities occupying channels 1-401 from the less strict emission standard that would apply to wide area SMR systems.

[10]New Par also takes the curious position that new technologies will support niche markets, but that such services may still be substantially similar to cellular services. If a service satisfies only a niche market, such as local SMR, it cannot be substantially similar to cellular service. It is precisely for this reason that the Commission must impose interoperability standards on wide area SMR systems, which it has found to be substantially similar to cellular service.

cellular operators. In such consumer oriented mobile telephone like services, however, the FCC should require that proprietary signaling protocols be available to manufacturers that wish to provide products to the marketplace.

In such consumer oriented mobile telephone services, equipment manufacturers must have access, under reasonable commercial terms and conditions, to proprietary signaling protocols so that consumers of these services are provided with a variety of equipment manufacturers from whose products they can choose. Because Congress and the FCC have determined that wide area SMR service is such a consumer oriented mobile telephone service, interoperability standards should apply to that service as well.

The Ericsson Corporation also opposes interoperability standards. It cites for support the FCC's recent decision not to impose interoperability standards on PCS systems. However, as Ericsson itself notes, the Commission's decision was based upon the finding that "...interoperability is likely to emerge between PCS licensees in a timely manner without our intervention".[11] Accordingly, the precedent cited by Ericsson is inapposite here. First, it is not solely the interoperability between wide area SMR licensees with which the Company is, and the Commission should be, concerned. In fact, because of Motorola's complete dominance in the wide area SMR equipment market, it is likely that equipment offered by one wide area SMR licensee will be interoperable on all other wide area SMR systems.

Interoperabililty, as that term is used by the Commission, ensures not only that users of one system have access to another system. It provides that consumers have a choice of equipment in telephone services intended for the consumer. As noted in the Company's initial Comments, this approach is consistent with the regulatory and judicial standards for interoperability of equipment on the landline telephone network. However, the type of interoperability referenced by the Commission (the use of equipment of

---

[11]Ericsson Comments at p. 3, citing Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, FCC 94-144 (Released June 13, 1994).

different manufacturers on a system) will not occur in the wide area SMR market without FCC intervention. It has been widely reported in the trade press that most announced wide area SMR providers have entered into agreements with Motorola to supply them equipment. In fact, several providers have economic partnerships with Motorola. As the Company noted in its initial Comments, Motorola and its economic and technological partners have not been willing to license, on commercially reasonable terms and conditions, technology to permit manufacturers to produce equipment compatible with its own. Accordingly, unless the FCC acts, Motorola will be the only manufacturer of wide area SMR equipment, a situation that is plainly not in the public interest.[12]

The National Association of Business and Educational Radio ("NABER"), whose members would benefit from interoperability standards, also opposes the concept. NABER states that requiring interoperability at the subscriber unit would result in mandating standards for the entire wireless industry. E.F. Johnson disagrees. As noted above, standards would be required for wide area SMR systems, because the FCC and Congress have found them to be, like cellular systems, consumer oriented mobile telephone systems. NABER also argues that interoperability could be achieved at the network level, because, by definition, all CMRS providers are interconnected with the public switched telephone network. E.F. Johnson acknowledges that interconnection between different forms of CMRS could and will occur at the network level. However, this solution does not address the issue of equipment interoperability, as the FCC has defined the term, within the wide area SMR industry necessary to foster consumer choice. Accordingly, the Company does not argue, as NABER suggests, that technology platforms offered by RAM, Geotek and others be compatible with one another at the subscriber unit and infrastructure levels. These have not yet been found to be systems or

[12]The Company recognizes that Motorola has committed to license a limited number of other manufacturers to produce wide area SMR equipment. Because these entities will be of Motorola's choosing, it is not consumers who will make the choice of which equipment is used on wide area SMR systems.

technologies offering consumer oriented mobile telephone service, similar to cellular telephone service, where there is a requirement for equipment interoperability today.[13]

C. Not all CMRS is Substantially Similar to Cellular Service

In its initial comments, the Company demonstrated that wide area SMR service, and not local SMR service, is substantially similar to cellular service, and should be subject to the same regulatory structure. In the Docket No. 94-33 proceeding, the Company similarly stated that FCC should forbear, where possible, from the imposition of burdens otherwise imposed on common carriers by Title II of the Communications Act for local SMR providers and other similarly situated entities.[14] Nevertheless, in this proceeding, several entities stated that all CMRS licensees should be subject to the same regulatory structure.

Typical are the comments of Southwestern Bell Corporation: "To one degree or another, all interconnected mobile services are substitutable for each other and thus should be regulated in the same manner."[15] Similar sentiments were expressed by other telephone companies. US West stated that "all broadband CMRS are interchangeable from the perspective of the consumer and should therefore be viewed as substantially similar."[16] NYNEX Corporation stated that a determination of substantial similarity should be based upon "whether the CMRS providers in question compete to meet similar customer demands for services."[17] Vanguard Cellular Systems, Inc. specifically states that local SMR licensees should be viewed as substantially similar to cellular for purposes of regulatory treatment. It argues that because any type of mobile interconnected service

---

[13]It is possible that in the future, other CMRS operators will be found to offer a service similar to cellular. Then, and only then, would interoperability within that service be appropriate.

[14]Comments of E.F. Johnson Company submitted June 27, 1994, responsive to the Notice of Proposed Rule Making, Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, GN Docket No. 94-33, FCC 94-101, Released My 4, 1994.

[15]Comments of Southwestern Bell at p. 3.

[16]Comments of US West at p. 3 [emphasis added].

[17]Comments of NYNEX Corporation at p. 3.

should be classified as CMRS, any distinctions between systems should be irrelevant to regulatory treatment.[18]

These comments ignore the commercial realities in the CMRS marketplace. In that respect, the Company agrees with McCaw Cellular Communications, Inc., which states that substantially similar services should be defined by their position in the marketplace.[19] That marketplace position cannot, as some commenting parties suggest, be based upon consumer perception. The Company prefers distinctions based upon realities, not perceptions. As the Company demonstrated in its initial Comments, a reliable distinction between services is the extent to which they employ frequency reuse on a broad geographic basis. This definition is not, as some suggest, technology based. Only those with sufficient spectrum, and who wish to provide mobile telephone service will possess sufficient market power to be considered substantially similar to cellular providers, and should be regulated as such. As Nextel notes: "The economic viability of ESMR systems requires large numbers of frequencies over large geographic areas. Indeed, an ESMR system with a small number of frequencies would not be economically viable, and likely would never be built."[20] It is, therefore, not merely the marketing actions of CMRS providers or consumer perception of the service they offer, that should determine if they are substantially similar with another CMRS service. Capability to compete, as measured by spectrum position (and the self selected technique of frequency reuse) should be the determinants of whether systems are similar.

D. Dispatch Service Should not be Permitted on Cellular or Substantially Similar Services

[18]Comments of Vanguard Cellular Systems, Inc. at p. 7.
[19]Comments of McCaw Cellular Communications, Inc. at p. 21.
[20]Comments of Nextel, Inc. at p. 16.

E.F. Johnson has argued in the past that cellular and similar service providers (in particular, wide area SMR operators) should not be permitted to offer dispatch service.[21] It has demonstrated that while the concept of additional providers of dispatch service might initially appear to be beneficial to consumers, in the long term, allowing cellular operators and similarly situated CMRS providers to offer dispatch will eliminate the availability of low cost dispatch service. In order to "level the playing field", the Company has recommended that all services regulated like cellular providers be prohibited from offering dispatch services on a for profit basis.[22]

Several parties ask, in this proceeding, the Commission to allow cellular licensees to offer dispatch service. [23] Apart from being contrary to the public interest, the FCC has already stated that it would, in the context of another proceeding, address this issue. [24] Accordingly, while the Commission should ultimately reject any attempt to permit dispatch service on cellular and similar systems, that question should be appropriately considered in the context specified by the Commission.

E. The FCC Should Further Examine Regional Licensing of 220 MHz Systems

Several parties, including the Company, addressed issues raised by the Commission concerning the licensing of systems in the 220-222 MHz band. In particular, these parties also discussed the Request for Waiver submitted by SunCom Mobile and Data, Inc. ("SunCom"). Virtually all of the parties submitting comments opposed the SunCom Request. Because there is no evidence in the record to support grant of the relief requested by SunCom, the Commission should deny that company's request.

---

[21]Comments of E.F. Johnson Company submitted November 8, 1993 at 11, Responsive to Notice of Proposed Rule Making, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 8 FCC Rcd 7988 (1993).

[22]CMRS operators, like Nextel, would be permitted to continue to offer dispatch service until the end of the 1996 grandfather period.

[23]See, e.g., Comments of BellSouth at p. 14.

[24]Second Report and Order at paragraph 285.

However, many of the same parties that opposed the SunCom request, like the Company, recognized a need for change in the current regulations governing 220 MHz systems. For example, US MobilComm, Inc. states that the Commission should encourage the development of 220 MHz regional networks.[25] The Company agrees that the rules governing 220 MHz systems are too restrictive, and in appropriate circumstances, the Commission should waive its regulations to permit the construction of 220 MHz facilities over a period longer than that otherwise permitted in the rules. The Commission should favorably review such requests from entities that can demonstrate a need, based upon a plan to develop multiple systems, the identity of network participants, and an inability to construct all of the required facilities in the time otherwise specified in the rules. While SunCom did not submit a request that met those criteria, the Company expects that the Commission will receive properly conceived waiver requests, which should be granted.

III. CONCLUSIONS

The Commission should initiate another phase of this proceeding to more fully consider the proposal to repack the 800 MHz band offered by Nextel. In any consideration of Nextel's proposal, however, the Commission must ensure that there remains spectrum not used by wide area SMR operators to meet the demonstrated requirements of internal communications systems and local SMR providers. Moreover, if the Commission adopts Nextel's plan in any form, it must adopt procedures to minimize disruption to existing licensees.

The Company's initial comments proposed: 1) interoperability (through access to signaling protocols) for wide area SMR systems: 2) different regulatory treatment for different categories of CMRS providers and 3) further examination of regional licensing of 220 MHz systems. The Company continues to believe that these are important elements

[25]Comments of US MobilComm at p. 6.

of this proceeding. Finally, the Company disagrees with those entities which suggest that the Commission should, in the context of this proceeding, permit all CMRS providers to offer dispatch service. The ability to offer dispatch should be properly considered elsewhere.

WHEREFORE, THE PREMISES CONSIDERED, E.F. Johnson Company hereby submits the foregoing Reply Comments and urges the Commission to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

E. F. JOHNSON COMPANY

By: _____

Russell H. Fox
Gardner, Carton & Douglas
1301 K Street N.W.
Suite 900
East Tower
Washington, D.C. 20005

Its Attorneys

Dated: July 11, 1994